

UNITED STATES COURT OF APPEALS

**Filed 10/2/96**

TENTH CIRCUIT

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UNITED STATES OF AMERICA and  
PATRICIA ANGUS, Revenue Officer,  
Internal Revenue Service,

Plaintiffs-Appellees,

v.

JOHN I. HARVEY,

Defendant-Appellant.

No. 96-4062  
(Dist. of Utah)  
(D.C. No. 95-CV-1055)

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**ORDER AND JUDGMENT\***

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Before **ANDERSON**, **BARRETT**, and **MURPHY**, Circuit Judges.

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After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Petitioner John I. Harvey appeals the district court's denial of his motion to dismiss enforcement proceedings brought against him by the United States government on behalf of the Internal Revenue Service ("IRS"). The district court denied Mr. Harvey's motion, finding it to be without merit. We affirm.

In August of 1995, an IRS Revenue Officer served an IRS summons on Mr. Harvey seeking the production of data regarding Mr. Harvey's tax liability for the years ending 1992, 1993, and 1994. Mr. Harvey failed to comply with the summons. Subsequently, the IRS brought a proceeding seeking enforcement of the summons. The district court issued an Order to Show Cause requiring Mr. Harvey to appear before a magistrate judge and show cause why he should not be compelled to obey the summons served upon him. The Order was served by leaving it at Mr. Harvey's residence with his son. Mr. Harvey filed a motion to dismiss the proceedings on the grounds that (1) the Order had not been served upon him personally, and (2) the court lacked jurisdiction over him because he was not a federal citizen and had not committed an act on federal property.

The magistrate judge issued a Report and Recommendation denying Mr. Harvey's motion. The magistrate judge found that service of the Order to Show Cause was proper because the Order was served at Mr. Harvey's residence upon a person of suitable age and discretion, and Mr. Harvey had actual notice of the order. *See* Fed. R. Civ. P. 4(e)(2). He also found that the court had jurisdiction

to hear the matter pursuant to its general jurisdiction over federal tax matters.  
The district court adopted the magistrate judge's Report and Recommendation.

After reviewing the briefs of the parties, the record on appeal, and the relevant law, we conclude that petitioner's arguments are without merit.

Therefore, the order of the United States District Court for the District of Utah is hereby **AFFIRMED** for substantially the reasons set out in the magistrate judge's Report and Recommendation, filed on February 1, 1996, and the district court's Order, filed March 8, 1996.

ENTERED FOR THE COURT

Michael R. Murphy  
Circuit Judge